

HB 345

33-18-201. Unfair claim settlement practices prohibited. No person may, with such frequency as to indicate a general business practice, do any of the following:

- (1) misrepresent pertinent facts or insurance policy provisions relating to coverages at issue;**
- (2) fail to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies;
- (3) fail to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies;
- (4) refuse to pay claims without conducting a reasonable investigation based upon all available information;**
- (5) fail to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed;**
- (6) neglect to attempt in good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear;**
- (7) compel insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by such insureds;
- (8) attempt to settle a claim for less than the amount to which a reasonable man would have believed he was entitled by reference to written or printed advertising material accompanying or made part of an application;
- (9) attempt to settle claims on the basis of an application which was altered without notice to or knowledge or consent of the insured;**
- (10) make claims payments to insureds or beneficiaries not accompanied by statements setting forth the coverage under which the payments are being made;
- (11) make known to insureds or claimants a policy of appealing from arbitration awards in favor of insureds or claimants for the purpose of compelling them to accept settlements or compromises less than the amount awarded in arbitration;
- (12) delay the investigation or payment of claims by requiring an insured, claimant, or physician of either to submit a preliminary claim report and then requiring the subsequent submission of formal proof of loss forms, both of which submissions contain substantially the same information;
- (13) fail to promptly settle claims, if liability has become reasonably clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage; or**
- (14) fail to promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement.

History: En. 40-3502.1 by Sec. 1, Ch. 320, L. 1977; R.C.M. 1947, 40-3502.1.

HB 345 Good Faith Assurance Bill - Please Vote YES

This bill is about protecting the rights of Montana insurance consumers - auto owners, homeowners, small businesses, and professionals like doctors. Our statutes provide protections for Montana's insurance consumers. We have a statutory right to have insurance companies operate in good faith when they review, adjust and settle insurance claims. When insurers violate their duty to operate in good faith, we have a private enforcement mechanism - Section 33-18-242 - that is the focus of HB 345.

It is only fair that when insurers violate their duty to operate in good faith that attorney fees in the underlying case should be damages in the separate bad faith case under Section 33-18-242. **If not for the insurers failure to act in good faith, the person would not have had to pay an attorney to get what they were entitled to in the first case.**

This bill only comes into play **after** a judge or jury has found that the insurer violated its statutory duty to investigate, adjust and settle claims in good faith. If insurers do their duty in good faith, there are no cases against them.

HB 345 **does not** allow attorney fees to be paid for either party in the bad faith claim - each party is responsible for paying their own attorney fees.

Any argument that HB 345 will be a disincentive for plaintiff's to settle is flat wrong. Look at page 2, lines 9-10 **"(5) An insurer may not be held liable under this section if the insurer had a reasonable basis in law or in fact for contesting the claim or the amount of the claim, whichever is in issue."** Plaintiff's can't win these suits if the insurer had a reasonable basis.

Insurers' arguments that this will drive up insurance premiums are not unexpected. But, rates would only go up if insurers are violating our good faith laws. The simplest thing insurers can do to keep rates down is to assure that they operate in good faith - the requirements of Section 33-18-201 are simple, straightforward and easy to comply with.

In the end, the insurers' higher premium argument is this simple: if you hold us responsible for our actions in violating Montana's good faith laws, then we will have to raise our rates. It is an admission that they will act in bad faith, and it is poor public policy to "reward" insurers for violating our laws that are supposed to protect Montana consumers.

Please vote YES on HB 345 to protect Montana insurance consumers.

HB 345 - How It Works

You are hit and injured by another driver that runs a red light, you have \$25,000 in medical bills already with more medical treatment likely, \$2,500 lost wages, plus \$10,000 in property damage. Creditors are hounding you.

You submit a claim to the driver's insurance company, along with copies of current bills. The insurer doesn't investigate the incident and offers you \$25,000 to settle the whole thing. Despite your repeated contacts, more copies of your damages, notice that creditors are hounding you etc. they refuse to agree to a reasonable settlement.

You hire an attorney and sue the driver. You win the case and the jury awards you \$100,000 - the \$25,000 in past medical bills, \$5,000 lost wages, \$10,000 for property damages, \$20,000 for future medical bills, \$15,000 for lost course of life and \$25,000 for pain caused by the accident. Out of the \$100,000, you pay your attorney \$30,000 for her services and costs in bringing and winning the suit.

After you have won your suit in the **underlying claim** (required by statute - section 6(b) on page 2 of the bill), you file a separate claim against the insurer alleging that they violated the Unfair Claims Practices Act (**33-18-201**). You prove that the insurer did violate the Act and you ask for damages caused by the insurer's violation of the Act.

HB 345 provides that the attorney fees and costs you paid in the **underlying claim** - the **\$30,000** - **are some of damages you are entitled to** - you only incurred those costs because the insurer failed to investigate, adjust or settle the claim in good faith. The Supreme Court (*Sampson*) said that the legislature had to specify that attorney fees in the underlying case were damages.

Your attorney does not get the **\$30,000** again. The \$30,000 is money that you receive for damages in the bad faith claim.

HB 345 **does not** allow attorney fees to be paid for either party in the bad faith claim - each party is responsible for paying their own attorney fees.

Underlying Accident Claim (You sue negligent driver)		Attorney Fees
Insured/Claimant		Insurer/Driver Pays Its Own
\$100,000 Judgment		Claimant Pays His Own
- \$30,000 for Attorney Fees		
Bad Faith Claim (You sue insurer for violating 33-18-201)		Attorney Fees
Damages include the \$30,000 you had to pay for attorney fees in the underlying claim above, plus other damages proximately caused by the insurer's violation of 33-18-201.		Insurer Pays Its Own Claimant Pays His Own